

## Urquhart

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**Subject:** FW: Handouts for Meeting with Carol Samson, Diane & Hugh Urquhart at 9 am  
**Attachments:** Appendix A - Three Alternative Solutions for the Nortel Disabled.pdf; Appendix B - Financial Status of the Nortel Disabled.pdf; CRA\_Letter\_Williams\_Feb\_2\_2011.pdf

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**From:** Urquhart [<mailto:urquhart@rogers.com>]  
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**Subject:** Handouts for Meeting with Carol Samson, Diane & Hugh Urquhart at 9 am

**The Honourable John Baird, M.P.**  
Member of Parliament for Ottawa West-Nepean  
Leader of the Government in the House of Commons

We are expecting our meeting this morning to be in Mr. Baird's constituency office. If this is not the case, please advise me by cell phone at 416-505-4832 or by email.

I have attached electronic copies of Appendix A & B handouts I am bringing to the meeting. I have provided here also a copy of the letter sent to Minister of Canada Revenue Agency Keith Ashfield from Senior Actuary Joann Williams, seeking a CRA Ruling on the Nortel Health and Welfare Trust Wind-Up Distribution not being compliant with the Income Tax Act and CRA Rules for Health and Welfare Trusts.

Diane Urquhart

**SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS**

<b>Present Value of Actuarial Liabilities Owed and Solution:</b>	<b>Income</b>	<b>Medicines</b>	<b>Combined</b>	<b>Government Incremental Relief</b>
<b>Actuarial Liabilities Owed</b>	<b>\$104</b>	<b>\$30</b>	<b>\$134</b>	
<b>HWT Settlement</b>	<b>\$29</b>	<b>\$0</b>	<b>\$29</b>	
<b>Net Amount Owed After HWT Settlement</b>	<b>\$75</b>	<b>\$30</b>	<b>\$105</b>	
<b>HWT Settlement Nov. 9, 2010</b>				
<b>Income Tax Free</b>	<b>\$4</b>	<b>\$0</b>	<b>\$4</b>	
<b>Provincial Drug Prescription Programs</b>	<b>\$0</b>	<b>\$23</b>	<b>\$23</b>	
<b>Net Owing After Above Gov't Assistance</b>	<b>\$71</b>	<b>\$8</b>	<b>\$78</b>	
<b>TO DATE - Total Taxpayer Downloading</b>	<b>\$4</b>	<b>\$23</b>	<b>\$26</b>	
<b>SOLUTION # 1</b>				
<b>Canada Revenue Agency Ruling on HWT Wind-up and/or Supreme Court Appeal Win</b>	<b>\$30</b>	<b>\$0</b>	<b>\$30</b>	
<b>HWT Wind-up Settlement Overturned</b>				
<b>Income Tax Free</b>	<b>\$4</b>	<b>\$0</b>	<b>\$4</b>	
<b>Net Owing After HWT Wind-up Settlement Overturned</b>	<b>\$37</b>	<b>\$8</b>	<b>\$45</b>	
<b>CPP/QPP Disability Special Relief (1)</b>	<b>\$15</b>	<b>\$0</b>	<b>\$15</b>	
<b>Government Emergency Relief Payment</b>	<b>\$23</b>	<b>\$8</b>	<b>\$30</b>	
<b>SOLUTION # 1 - Total Taxpayer Downloading</b>	<b>\$45</b>	<b>\$30</b>	<b>\$75</b>	<b>\$48</b>
<b>SOLUTION # 2</b>				
<b>CPP/QPP Disability Special Relief (1)</b>	<b>\$15</b>	<b>\$0</b>	<b>\$15</b>	
<b>Government Emergency Relief Payment</b>	<b>\$56</b>	<b>\$8</b>	<b>\$64</b>	
<b>SOLUTION # 2 - Total Taxpayer Downloading</b>	<b>\$75</b>	<b>\$30</b>	<b>\$105</b>	<b>\$78</b>
<b>SOLUTION # 3</b>				
<b>Introduce a Nortel Disabled Emergency Act (Force the Creditors to Pay)</b>				
	<b>\$71</b>	<b>\$8</b>	<b>\$78</b>	
<b>SOLUTION # 3 - Total Taxpayer Downloading</b>	<b>\$4</b>	<b>\$23</b>	<b>\$26</b>	<b>\$0</b>

**SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS**

**\$ MILLIONS**                                      **TOTAL**              **FEDERAL**              **ONTARIO**              **QUEBEC**              **ALBERTA**              **B.C.**

**CRA RULING + CPP/QPP DISABILITY SPECIAL RELIEF + EMERGENCY RELIEF PAYMENT**

<b>SOLUTION # 1</b>	<b>\$75</b>	<b>\$26</b>	<b>\$32</b>	<b>\$11</b>	<b>\$5</b>	<b>\$0</b>
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**CPP/QPP DISABILITY SPECIAL RELIEF + EMERGENCY RELIEF PAYMENT**

<b>SOLUTION # 2</b>	<b>\$105</b>	<b>\$47</b>	<b>\$38</b>	<b>\$13</b>	<b>\$6</b>	<b>\$1</b>
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**NORTEL DISABLED EMERGENCY ACT**

<b>SOLUTION # 3</b>	<b>\$26</b>	<b>\$3</b>	<b>\$16</b>	<b>\$5</b>	<b>\$2</b>	<b>\$0</b>
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**SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS**

Present Value of Actuarial Liabilities Owed and Solutions (\$ M)	Income	Medicines	Combined	Federal (2)	Ontario	Quebec	Alberta	B.C.	
				0% 70%	67% 20%	22% 7%	10% 3%	1% 0%	
<b>Actuarial Liabilities Owed</b>	<b>\$104</b>	<b>\$30</b>	<b>\$134</b>						
<b>HWT Settlement</b>	<b>\$29</b>	<b>\$0</b>	<b>\$29</b>						
<b>Net Amount Owed After HWT Settlement</b>	<b>\$75</b>	<b>\$30</b>	<b>\$105</b>						
<b>HWT Settlement Nov. 9, 2010</b>									
<b>Income Tax Free</b>	12%	\$4	\$0	\$4	\$2.7	\$0.8	\$0.3	\$0.1	\$0.0
<b>Provincial Drug Prescription Programs</b>	75%	\$0	\$23	\$23	\$0.0	\$15.1	\$5.0	\$2.3	\$0.2
<b>Net Owing After Above Gov't Assistance</b>		\$71	\$8	\$78					
<b>TO DATE - Total Taxpayer Downloading</b>		\$4	\$23	\$26	\$2.7	\$15.8	\$5.2	\$2.4	\$0.2
<b>SOLUTION # 1</b>									
<b>Canada Revenue Agency Ruling on HWT Wind-up and/or Supreme Court Appeal Win</b>		\$30	\$0	\$30					
<b>HWT Wind-up Settlement Overturned</b>									
<b>Income Tax Free</b>	12%	\$4	\$0	\$4	\$2.7	\$0.8	\$0.3	\$0.1	\$0.0
<b>Net Owing After HWT Wind-up Settlement Overturned</b>		\$37	\$8	\$45					
<b>CPP/QPP Disability Special Relief (1)</b>		\$15	\$0	\$15	\$0.0	\$9.7	\$3.2	\$1.5	\$0.1
<b>Government Emergency Relief Payment</b>		\$23	\$8	\$30	\$21.0	\$6.0	\$2.0	\$0.9	\$0.1
<b>SOLUTION # 1 - Total Taxpayer Downloading</b>		\$45	\$30	\$75	\$26.4	\$32.4	\$10.6	\$4.8	\$0.5

**SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS**

Present Value of Actuarial Liabilities Owed and Solutions (\$ M)	Income	Medicines	Combined	Federal (2)	Ontario	Quebec	Alberta	B.C.	
				0% 70%	67% 20%	22% 7%	10% 3%	1% 0%	
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<b>Net Owing After Above Gov't Assistance</b>		\$71	\$8	\$78					
<b>TO DATE - Total Taxpayer Downloading</b>		\$4	\$23	\$26	\$2.7	\$15.8	\$5.2	\$2.4	\$0.2
<b>SOLUTION # 2</b>									
<b>CPP/QPP Disability Special Relief (1)</b>		\$15	\$0	\$15	\$0.0	\$9.7	\$3.2	\$1.5	\$0.1
<b>Government Emergency Relief Payment</b>		\$56	\$8	\$64	\$44.8	\$12.9	\$4.2	\$1.9	\$0.2
<b>SOLUTION # 2 - Total Taxpayer Downloading</b>		\$75	\$30	\$105	\$47.4	\$38.4	\$12.6	\$5.7	\$0.6

**SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS**

Present Value of Actuarial Liabilities Owed and Solutions (\$ M)	Income	Medicines	Combined	Federal (2)	Ontario	Quebec	Alberta	B.C.		
				0%	67%	22%	10%	1%		
				70%	20%	7%	3%	0%		
<b>Actuarial Liabilities Owed</b>	<b>\$104</b>	<b>\$30</b>	<b>\$134</b>							
<b>HWT Settlement</b>	<b>\$29</b>	<b>\$0</b>	<b>\$29</b>							
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<b>Income Tax Free</b>	12%	\$4	\$0	\$4	\$2.7	\$0.8	\$0.3	\$0.1	\$0.0	
<b>Provincial Drug Prescription Programs</b>	75%	\$0	\$23	\$23	\$0.0	\$15.1	\$5.0	\$2.3	\$0.2	
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<b>TO DATE - Total Taxpayer Downloading</b>		\$4	\$23	\$26	\$2.7	\$15.8	\$5.2	\$2.4	\$0.2	
<b>SOLUTION # 3</b>										
<b>Introduce a Nortel Disabled Emergency Act (Force the Creditors to Pay)</b>										
		<b>Not Pay Medicines</b>	<b>\$71</b>	<b>\$8</b>	<b>\$78</b>					
<b>SOLUTION # 3 - Total Taxpayer Downloading</b>		<b>Not Pay Medicines</b>	<b>\$4</b>	<b>\$23</b>	<b>\$26</b>	<b>\$2.7</b>	<b>\$15.8</b>	<b>\$5.2</b>	<b>\$2.4</b>	<b>\$0.2</b>

**Notes**

(1) CPP/QPP Disability Special Concessions	%	#	After	Before	Difference	PV Factor	PV Cost
Below Max	80%	288	\$13,840	\$9,728	\$4,112	9.5	\$11
Not On CPP/QPP	10%	36	\$9,728	\$0	\$9,728	9.5	\$3
<b>Total CPP/QPP Change</b>							<b>\$15</b>
Nortel Income		360		\$30,500		9.5	

(2) Federal and Provincial Income Taxes (\$ Millions)	Federal	Provincial	Combined
Personal Income Taxes	\$189,222		
Corporate Income Taxes	\$50,277		
<b>Total Income Taxes</b>	<b>\$239,499</b>	<b>\$95,652</b>	<b>\$335,151</b>
Mix of Income Taxes	71%	29%	100%

Federal Government income taxes are assumed to contribute to taxpayer downloading in terms of income tax free settlements and additional government bailout required, and not for CPP/QPP special concessions.

## Comparison of Nortel Disabled and Pensioners Income Including CPP, OAS & Provincial Prescription Drugs Reimbursement

Includes CPP Disability, CPP & OAS Pension Income, Unless Noted Otherwise.

■ Before ■ After

Includes Provincial Prescription Drug Programs After at 75% Funding Compared to Nortel Before.

Income Before Is on an Average Basis Reported By Nortel.

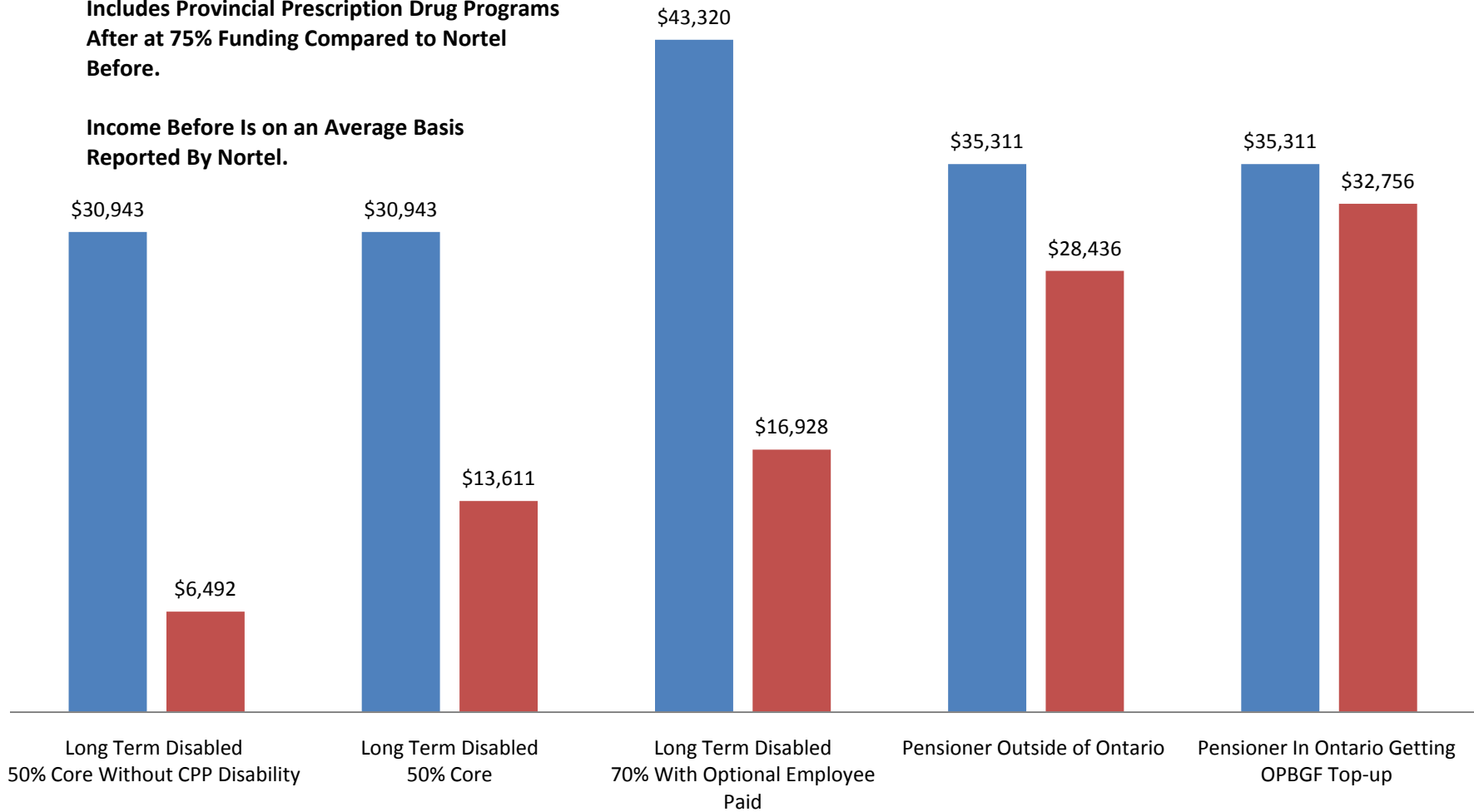
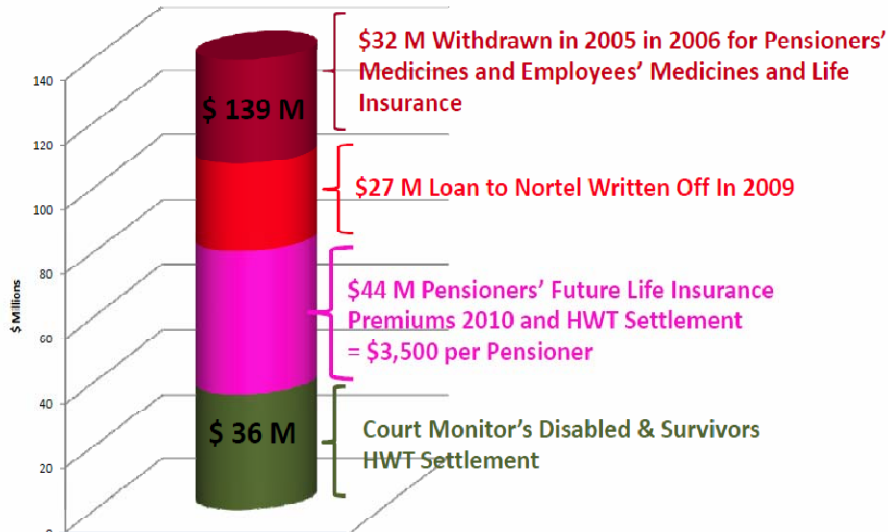


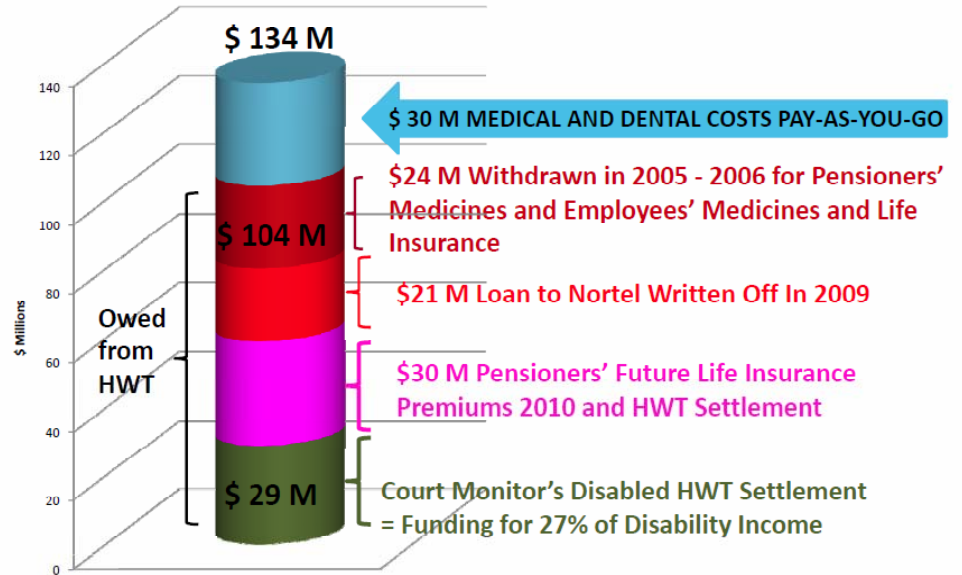
Figure 2: Health and Welfare Trust Withdrawal of Assets a Form of Misappropriation

### Health and Welfare Trust Account – Disabled and Survivors



**Employee and Employer Contributions Inappropriately Used**  
Publicly Disclosed On August 30<sup>th</sup> Five Months After March 31<sup>st</sup> Settlement

### Disabled Actuarial Liabilities Owed for Income and Medical & Dental Costs





**Gains and Losses If Life Insurance Not a Legal Obligation of HWT**

**\$ Millions**

**March 31st Settlement - Incremental Gain 2010 Employee Benefits**

**March 31st Settlement - Pensioners Life Insurance from HWT for 2010**

**Nov. 9th HWT Settlement**

**Total March 31st Settlement and Nov. 9th HWT Settlement**

**March 31st Legal Release Ignores Breach of Fiduciary Duties for Withdrawn HWT Assets**

**Nov. 9th HWT Settlement Pays Pensioners Life Benefits Notwithstanding No Death Incurred**

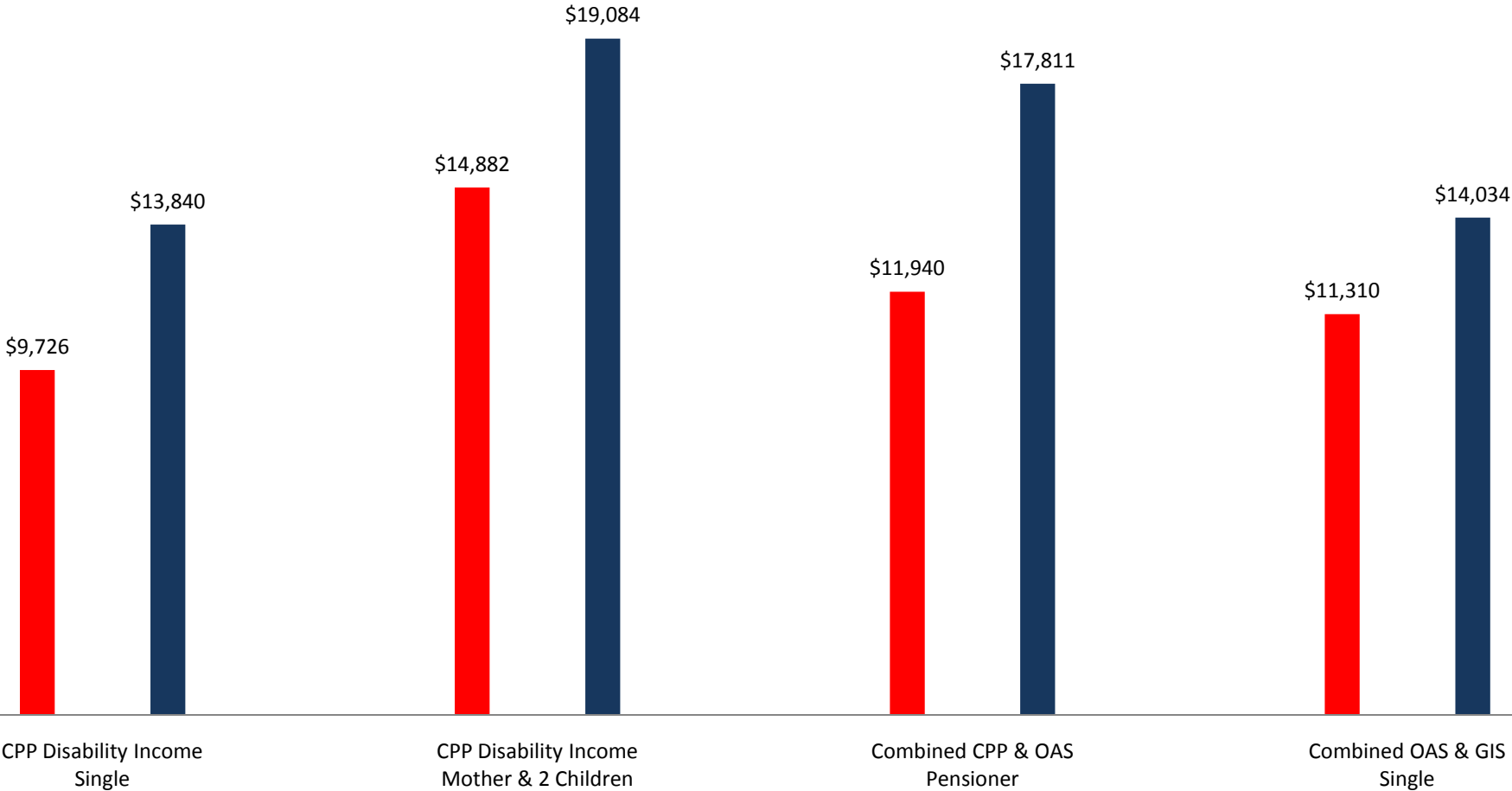
**Combined Impact of Disabled and Survivors Mistreatment**

**OPBGF Grant from Taxpayers**

	Pensioners	Disabled	Survivors	Creditors	Combined
	\$23	\$12	\$3	-\$38	\$0
	\$8	\$0	\$0	\$0	\$8
	\$36	\$29	\$7	\$0	\$72
	\$67	\$41	\$10	-\$38	\$80
	\$0	-\$45	-\$6	\$51	\$0
	\$36	-\$30	-\$6	\$0	\$0
	\$36	-\$75	-\$12	\$51	\$0
	\$250	\$0	\$0	\$0	\$250

# Comparison of CPP, OAS & GIS Social Security Benefits

■ Average 2010 ■ Maximum 2011



## Comparison of Canada, U.S. And U.K. Maximum Government Disability Benefits

2011	Canada Pension Plan	U.S. Social Security	UK Pension Protection Fund*
Disability income	\$13,840	\$25,044	
Supplement for children of disabled parent	\$5,244	\$18,802	
<b>Disability income for family</b>	<b>\$19,084</b>	<b>\$43,846</b>	<b>\$36,068</b>

\*Average of all ages

# Nortel Health and Welfare Trust Distribution Court Decisions

**J. Morawetz - November 9, 2010 Ontario Superior Court of Justice Decision**

**J. Weiler - January 7, 2011 Court of Appeal of Ontario Decision**

	ACTUARIAL LIABILITIES
Income *	\$104 M
Life Insurance	
Core	\$5 M
Optional Waived	\$3 M
Life Insurance Total	\$8 M
Medical & Dental	\$30 M
Pension Accruals	\$26 M
Post Retirement Medical & Dental and Life	\$13 M
<hr/>	
<b>Total LTD Actuarial Liabilities</b>	<b>\$180 M</b>



\* Mercers says just \$80 M Actuarial Liabilities

**HOW ARE THE DISABLED SUPPOSED TO GO ON WITHOUT MOST OF THEIR INCOME?**

## **2010 Ontario Budget: Chapter III: Tax and Pension Systems for Ontario's Future**

### **March 25, 2010**

#### **The Pension Benefits Guarantee Fund**

One of the issues raised by the Expert Commission was the continuing viability of the Pension Benefits Guarantee Fund

(PBGF). The PBGF is the only fund of its kind in Canada. The Pension Benefit Guaranty Corporation in the United States and the Pension Protection Fund in the United Kingdom operate in similar pension systems. All three face considerable financial challenges.

While intended to be self-financing, the annual assessments paid by the employer sponsors of DB pension plans (which averaged \$48 million per year from 2005 to 2009) have been insufficient to meet the claims on the PBGF. The Province has provided a series of loans to the Fund that resulted in debts outstanding to the Province of \$275 million at March 31, 2009.

#### **Stabilizing the PBGF**

Responding to the increasing challenges faced by the PBGF, the government is providing a \$500 million grant to the Fund in 2009-10. This grant will help ensure the PBGF has sufficient assets to cover claims in the near term.

Keith Ashfield  
Minister of the Canada Revenue Agency  
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I am an actuarial advisor to a group of disabled former Nortel employees who were, until recently, receiving their monthly income payments from Nortel's Health and Welfare Trust (the Nortel HWT). As far as we know, Nortel has always intended the Nortel HWT to comply with the *Income Tax Act (Canada)* (the ITA) and the published interpretations of the ITA by the Canada Revenue Agency (CRA). From the disclosed Nortel HWT tax filings for 2005 to 2009 and what we are told by the Nortel long term disability income recipients, it appears that benefits and investment income have been taxed in accordance with applicable CRA policy. We presume, but are unable to confirm, that Nortel has deducted all of its contributions to the Nortel HWT for tax purposes, as business expenses in the same year as they were paid into the fund.

As you may know, the Nortel HWT will be wound up in a deficit position and therefore the proper distribution of assets has become an issue. It is proposed to disburse assets in proportion to liabilities in respect of certain "participating" benefits. The liabilities being used for this purpose **include provision for future life insurance payments to pensioners**. That is, living pensioners are being allocated monies from the HWT to satisfy Nortel's promise to pay death benefits to employees who are said to have vested claims. It is our understanding, however, that HWTs may only consist of group term life insurance policies. This accords with Interpretation Bulletin IT-85R2, titled *Health and Welfare Trusts for Employees*, which provides that **HWTs are not permitted to comprise of permanent life insurance policies**. **In addition**, Nortel's Ruling Request Letter dated December 16, 1979 and the Revenue Canada Ruling dated December 28, 1979 specifically provided that the funding arrangement for the Group Life Insurance Plan (Part I – Basic)<sup>1</sup> would be for Nortel to make contributions to the HWT sufficient to pay **premiums**. The 1979 tax ruling makes clear that **only premiums** would be paid

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<sup>1</sup> The Pensioners and Active Employees were both covered by one Umbrella Group Term Life Insurance Policy, referred to as Group Life Insurance Plan – Part I.

from the HWT. Despite this, money is being allocated from the HWT to pay death benefits to living pensioners.

The now approved allocation is diverting a significant proportion of HWT assets away from benefits related to previously incurred disability claims to pay for benefits that have not as yet been incurred and which cannot comprise valid HWTs. It is our contention that only previously incurred claims for benefit plans permitted within HWTs should be considered liabilities on wind up of the Nortel HWT, as only these may be funded on a tax-deductible basis. In accordance with subparagraph 18(9)(a)(iii) of the ITA, **consideration for insurance in respect of a period after the end of a year is generally not deductible as a business expense for that year.**

Notwithstanding this prohibition, Nortel has historically kept a notional account for these future life insurance premiums, known as the Pensioners' Insurance Fund (PIF), within the Nortel HWT. We believe that this accounting should not be relevant on wind up of the Nortel HWT, because it is not possible for a valid HWT to hold assets for this purpose. In any event, Nortel was **required** pursuant to the Nortel HWT Trust Agreement and CRA Information Bulletin IT-428 (*Wage Loss Replacement Plans*) to accumulate funds in respect of incurred disability claims. **Nortel was the insurer with respect to these disability income claims and provision should have been made for the orderly funding of disabled life reserves.** Despite the requirement for sound actuarial funding, the value of assets allocated to this purpose is woefully deficient.

We believe that the actual distribution of assets to the pensioners for death benefits may disqualify the Nortel HWT as a *bona fide* Health and Welfare Trust for tax purposes. The proposed HWT payments to pensioners as settlement for future death benefits represent neither legitimate HWT benefit payments, nor surplus. Clearly tax will have been improperly deferred on any lump sum distributions to pensioners at the HWT's wind-up.

As you may know, the Ontario Superior Court has not supported our interpretation that the pensioners are not appropriate beneficiaries of the Nortel HWT in respect of life insurance benefits or future life insurance premiums. Our group has also been denied leave to appeal to the Court of Appeal of Ontario. However, it would be appropriate, in my opinion, for the CRA to issue an opinion or ruling addressing the status of the proposed payments to pensioners and the consequences of making such payments.

I cannot stress enough the importance of this issue to the Nortel disabled group. The HWT distribution that the court has now condoned is not compliant with the ITA or CRA's interpretations thereof and it will needlessly leave these people in poverty.

Beyond the significance to the Nortel disabled, I believe clarity is required for the benefit of actuaries, tax advisors and other relevant professionals at large.

I have enclosed copies of the following documents:

1. [Request for Advanced Income Tax Rulings – Northern Telecom Benefit Plans  
December 16, 1979](#)
2. [Reply to Request for Advanced Income Tax Rulings from Revenue Canada  
December 28, 1979](#)
3. [Income Tax Act Amendment S. 18 \(9\) \(a\) \(iii\) Dec. 11, 1979](#)
4. [Trust Agreement as at January 1, 1980 between Northern Telecom Limited  
and Montreal Trust Company](#)
5. [Affidavit of Joann Williams – August 9, 2010](#)
6. [Affidavit of Joann Williams – September 24, 2010](#)
7. [Affidavit of Jeremy Bell – September 23, 2010](#)
8. [Valuation of Non-Pension Benefit Obligations at December 31, 2010 \(Mercer\)](#)
9. [Appendix UU - Mercers Analysis of the Funding Status of the Pensioners  
Life Insurance Fund as of Jan. 1, 2002](#)
10. [Supplement to Fifty-first Report of the Monitor dated September 17, 2010](#)
11. [HWT Allocation Order dated November 9, 2010](#)

The above documents and many more are available at monitor's website:  
<http://documentcentre.eycan.com/Pages/Overview.aspx?SID=89>

Please let me know if you require anything further. We appreciate your attention to this urgent matter.

Sincerely

Joann Williams, BSc., FSA, FCIA  
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(613) 842-7245  
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